

§ 20.401

(2) By the filing of a notice of withdrawal by the Coast Guard representative at any time before the respondent has served a responsive pleading.

(3) With respect to a complaint filed under section 311(b)(6) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)(6)) or section 109(d) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9609(b)), by the filing of—

(i) A notice of withdrawal by the Coast Guard representative at any time after the respondent has served a responsive pleading, but before the issuance of an order assessing or denying a class II civil penalty, together with

(ii) A certification by the representative that the filing of the notice is due to a request by the Attorney General—in accordance with subsection 10(d) of Executive Order 12777 (56 FR 54757; 3 CFR, 1991 Comp., p. 351)—that the Coast Guard refrain from conducting an administrative proceeding.

(b) Unless the stipulation or notice of withdrawal states otherwise, a withdrawal under paragraph (a) of this section is without prejudice.

(c) Except as provided in paragraph (a) of this section, no administrative proceeding may end in withdrawal unless approved by an ALJ upon such terms as she or he deems proper.

(d) Any respondent may move to dismiss a complaint, the government may move to dismiss a petition, or any party may lodge a request for relief, for failure of another party to—

(1) Comply with the requirements of this part or with any order of the ALJ;

(2) Show a right to relief based upon the facts or law; or

(3) Prosecute the proceeding.

(e) A dismissal resides within the discretion of the ALJ.

Subpart D—Proceedings

§ 20.401 Initiation of administrative proceedings.

An administrative proceeding commences when the Coast Guard representative files the complaint with the Hearing Docket Clerk and serves a copy of it on the respondent.

33 CFR Ch. I (7–1–01 Edition)

§ 20.402 Public notice.

Upon the filing of a complaint under 33 U.S.C. 1321(b) (6), the Coast Guard provides public notice of a class II civil penalty proceeding. The notice appears in the FEDERAL REGISTER.

§ 20.403 Consolidation and severance.

(a) A presiding ALJ may for good cause, with the approval of the Chief ALJ and with all parties given notice and opportunity to object, consolidate any matters at issue in two or more administrative proceedings docketed under this part. (Good cause includes the proceedings' possessing common parties, questions of fact, and issues of law and presenting the likelihood that consolidation would expedite the proceedings and serve the interests of justice.) The ALJ may not consolidate any matters if consolidation would prejudice any rights available under this part or impair the right of any party to place any matters at issue.

(b) Unless directed otherwise by the Chief ALJ, a presiding ALJ may, either in response to a motion or on his or her own motion, for good cause, sever any administrative proceeding with respect to some or all parties, claims, and issues.

§ 20.404 Interested persons.

(a) Any person not a party to a class II civil penalty proceeding under 33 U.S.C. 1321(b)(6) who wishes to be an interested person in the proceeding shall, 30 days or less after publication in the FEDERAL REGISTER of the public notice required by § 20.402, file with the Hearing Docket Clerk either—

(1) Written comments on the proceeding; or

(2) Written notice of intent to present evidence at any hearing in the proceeding.

(b) The presiding ALJ may, for good cause, accept late comments or late notice of intent to present evidence.

(c) Each interested person shall receive notice of any hearing due in the proceeding and of the decision in the proceeding. He or she may have a reasonable opportunity to be heard and to present evidence in any hearing.

(d) The opportunity secured by paragraph (c) of this section does not extend to—

(1) The issuance of subpoenas for witnesses;

(2) The cross-examination of witnesses; or

(3) Appearance at any settlement conference.

Subpart E—Conferences and Settlements

§ 20.501 Conferences.

(a) Any party may by motion request a conference.

(b) The ALJ may direct the parties to attend one or more conferences before or during a hearing.

(c) The ALJ may invite interested persons to attend a conference, other than a settlement conference, as the ALJ deems appropriate.

(d) The ALJ shall give reasonable notice of the time and place of any conference to the parties, and to interested persons if invited. A conference may occur in person, by telephone, or by other appropriate means.

(e) Each party, and any interested person invited, shall be fully prepared for a useful discussion of all issues properly before the conference, both procedural and substantive, and be authorized to commit themselves or those they represent respecting those issues.

(f) Unless the ALJ excuses a party, the failure of a party to attend or participate in a conference, after being served with reasonable notice of its time and place, waives all objections to any agreements reached in it and to any consequent orders or rulings.

(g) The ALJ may direct that any of the following be addressed or furnished before, during, or after the conference:

(1) Methods of service and filing.

(2) Motions for consolidation or severance of parties or issues.

(3) Motions for discovery.

(4) Identification, simplification, and clarification of the issues.

(5) Requests for amendment of the pleadings.

(6) Stipulations and admissions of fact and of the content and authenticity of documents.

(7) The desirability of limiting and grouping witnesses, so as to avoid duplication.

(8) Requests for official notice and particular matters to be resolved by reliance upon the substantive standards, rules, and other policies of the Coast Guard.

(9) Offers of settlement.

(10) Proposed date, time, and place of the hearing.

(11) Other matters that may aid in the disposition of the proceeding.

(h) No one may stenographically report or otherwise record a conference unless the ALJ allows.

(i) During a conference, the ALJ may dispose of any procedural matters on which he or she is authorized to rule.

(j) Actions taken at a conference may be memorialized in—

(1) A stenographic report if authorized by the ALJ;

(2) A written transcript from a magnetic tape or the equivalent if authorized by the ALJ; or

(3) A statement by the ALJ on the record at the hearing summarizing them.

§ 20.502 Settlements.

(a) The parties may submit a proposed settlement to the ALJ.

(b) The proposed settlement must be in the form of a proposed decision, accompanied by a motion for its entry. The decision must recite the reasons that make it acceptable, and it must be signed by the parties or their representatives.

(c) The proposed decision must contain—

(1) An admission of all jurisdictional facts;

(2) An express waiver of—

(i) Any further procedural steps before the ALJ; and

(ii) All rights to seek judicial review, or otherwise challenge or contest the validity, of the decision;

(3) A statement that the decision will have the same force and effect as would a decision made after a hearing; and

(4) A statement that the decision resolves all matters needing to be adjudicated.

Subpart F—Discovery

§ 20.601 General.

(a) Unless the ALJ orders otherwise, each party—and each interested person